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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CHRISTOPHER SOTO,

17 Defendant.

No. 2:22-cr-00386-AB

GOVERNMENT'S OPPOSITION TO
DEFENDANT CHRISTOPHER SOTO'S EX
PARTE APPLICATION FOR ORDER
ALLOWING PRESENTATION OF
VIDEO

Trial Date: Dec. 9, 2024

Hearing Time: 8:30 am

Location: Courtroom of the
Hon. André Birotte
Jr.

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21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California and Assistant United States Attorneys Alexander H. Tran
24 and Alexander S. Gorin, hereby submit its Opposition to Defendant
25 Christopher Soto's Ex Parte Application For an Order Allowing a
26 Presentation of a Video from the Western District of Washington.
27 (ECF No. 144.) The government requests that this Court deny
28 defendant's application.

1 This Opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: 12/7/2024

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 MACK E. JENKINS
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/

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ALEXANDER H. TRAN

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11 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On December 6, 2024, one business day before the start of trial, defendant Christopher Soto filed an ex parte application seeking an Order from the Court to play an 11-minute video from the Western District of Washington (WDWA) that is alleged to describe the concept of unconscious bias at his trial on December 9, 2024.¹ (ECF No. 144.) The Court should deny this application because the video is unnecessary, confusing, and needlessly cumulative of the Ninth Circuit Model Jury Instructions which address and describe -- in plain English -- to the jury the concept of unconscious biases. For the reasons set forth herein, the government requests that this Court deny defendant's request play the video from the WDWA.

II. THE COURT SHOULD NOT PLAY THE 11-MINUTE WDWA VIDEO

Defendant's proposed video is confusing, unnecessary, and cumulative of the Model Instructions. For example, Model Instruction No. 1.1 (Duty of Jury) states, in relevant part:

Perform these duties fairly and impartially. You should not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias,

¹ Defense counsel did not notify the government that he intended to file an ex parte application and did not request the government's position on any forthcoming application. (See Declaration of Alexander H. Tran ¶ 3.)

1 unconscious bias can affect how we evaluate
2 information and make decisions.

3 Likewise, Model Instruction No. 6.1 (Duties of the Jury to Find
4 Facts and Follow Law) states, in relevant part:

5 You must decide the case solely on the evidence
6 and the law. You will recall that you took an oath
7 promising to do so at the beginning of the case.
8 You should also not be influenced by any person's
9 race, color, religious beliefs, national ancestry,
10 sexual orientation, gender identity, gender, or
11 economic circumstances. Also, do not allow
12 yourself to be influenced by personal likes or
13 dislikes, sympathy, prejudice, fear, public
14 opinion, or biases, including unconscious biases.
15 Unconscious biases are stereotypes, attitudes, or
16 preferences that people may consciously reject but
17 may be expressed without conscious awareness,
18 control, or intention.

19 Model Instruction Nos. 1.1 and 6.1 clearly, accurately, and
20 concisely state the law in this Circuit. The instructions are clear
21 and there is nothing confusing about them, nor do they omit any
22 relevant aspect of the law. Defendant's 11-minute proposed video is
23 duplicative and goes far beyond the approved Model Instructions.
24 Thus, it will mislead and confuse the jury. Although the commentary
25 to the Model Jury Instructions may refer to the WDWA video, as an
26 example, this Court is not bound by the commentary, and is not
27 required to play the video. Indeed, a court in this district
28 recently denied a defendant's request to play the same video. See
United States v. Fletes, No. 2:23-cr-556-MEMF, ECF No. 53 ("Request
at Page 12 (WDWA video): DENIED.").² This Court should reach the

² Defendant notes that another court in this district recently approved of the WDWA video as well. The government submits, respectfully, that this point is not dispositive in any way.

1 same conclusion here because the video is unnecessary, cumulative,
2 and will confuse the jury.

3 **III. CONCLUSION**

4 For the foregoing reasons, the government respectfully requests
5 that the Court deny defendant's ex parte application.

DECLARATION OF ALEXANDER H. TRAN

I, Alexander H. Tran, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I am one of the attorneys representing the government in this case.

2. On December 5, 2024 at 11:38 a.m., defense counsel for defendant Christopher Soto sent an email to the government with the subject line "WDWA Implicit Bias Video", containing one sentence: "This linked video was approved to be played in Judge Gee's court on 12/02."

3. In his email, defense counsel did not advise the government "of the date and substance of the proposed ex parte application" and did not request the government's position on any forthcoming ex parte application. See C.D. Cal. L.R. 7-19.

4. The government learned of defendant's ex parte application and his request to play the WDWA video when his application was filed on December 6, 2024 at 4:00 p.m. (ECF No. 144.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on December 7, 2024.

/s/

ALEXANDER H. TRAN